

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JOHNNIE M. DuBOSE

Plaintiff,

V.

MICHAEL WALSH, in his official capacity as New Castle County Sheriff; AMERICAN BUSINESS CREDIT (ABC); ROBERT K. BESTE, JR.; and MAGGIE CLAUSELL, Esq.

Defendants.

C.A. No.: 07-45-SLR/LPS

**DEFENDANT MAGGIE CLAUSELL, ESQ.'S REPLY BRIEF TO PLAINTIFF'S
ANSWERING BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS,
MOTION TO SUPPLEMENT MOTION TO DISMISS, JOINDER MOTION AND IN
THE ALTERNATIVE CROSS-MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Defendant Maggie Clausell, Esq. (“Ms. Clausell”), by and through undersigned Counsel, and respectfully replies to the *Answering Brief of Plaintiff in support of his opposition to Defendant Motion to Dismiss. Motion to Supplement Motion to Dismiss, Motion to Joinder in the alternative plaintiff Cross Motion for Summary Judgment*. In support thereof Ms. Clausell states to wit:

It is Ms. Clausell's position that Plaintiff's Complaint (D.I. #1) should be dismissed for the reasons previously stated in her earlier Motion to Dismiss and Motion to Join. (D.I. #12).

In as much as Plaintiff's brief is not responsive to Ms. Clausell's Motion to Dismiss/Motion to Join, and is instead styled as a cross-motion for summary judgment, this brief is premature. Federal Rule of Civil Procedure Rule 56 requires the moving party to prove that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. Pro. 56. As the pleadings stage has not ended and discovery has not

yet begun, Ms. Clausell has not had the opportunity to respond to the veracity of Plaintiff's Complaint and determine whether there exists material issues of fact. Therefore summary judgment is premature.

Ms. Clausell respectfully submits that the Plaintiff's Complaint should be dismissed for insufficiency of service of process as the Plaintiff's own admission contained within his return of service indicates that he did not properly effectuate service of the Summons and Complaint upon Maggie Clausell.

Furthermore, the Complaint should be dismissed for lack of subject matter jurisdiction, as argued by the co-defendant Robert K. Beste, Jr. in his Motion to Dismiss, as well as be dismissed for failure to state a claim against Maggie Clausell as required by Fed. R. Civ. P. 12(b)(6).

WHEREFORE, Defendant Maggie Clausell, Esq., respectfully requests that this Court dismiss Plaintiff's Complaint as it pertains to Maggie Clausell.

TIGHE & COTTRELL, P.A.

/s/ Paul Cottrell
Paul Cottrell, Esq. (DE I.D. # 2391)
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Dated: March 25, 2008

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JOHNNIE M. DuBOSE

Plaintiff,

V.

MICHAEL WALSH, in his official capacity as New Castle County Sheriff; AMERICAN BUSINESS CREDIT (ABC); ROBERT K. BESTE, JR; and MAGGIE CLAUSELL, Esq.

Defendants.

C.A. No.: 07-45-SLR/LPS

CERTIFICATE OF SERVICE

I, Paul Cottrell, Esquire, hereby certify that on March 25th, 2008, I caused to be served a true and correct copy of the attached *Defendant Maggie Clausell, Esq.’s Reply Brief to Plaintiff’s Answering Brief in Opposition to Defendants’ Motion to Dismiss, Motion to Supplement Motion to Dismiss, Joinder Motion and in the Alternative Cross-Motion for Summary Judgment* upon the following in the manner indicated:

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(SIGNATURE ON NEXT PAGE)

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Dated: March 25, 2008